

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

**In re: Methyl Tertiary Butyl Ether
("MTBE")
Products Liability Litigation**

MDL NO. 1358 (SAS)
Master File No. 1:00-1898

**DECLARATION OF DUANE
C. MILLER IN SUPPORT OF
DEFENDANT PETRO-
DIAMOND
INCORPORATED'S MOTION
FOR ORDER DETERMINING
GOOD FAITH SETTLEMENT**

This Document Relates To:
*Orange County Water District v. Unocal
Corp., et al.* 04 Civ. 4968 (SAS)

**DECLARATION OF DUANE C. MILLER IN SUPPORT OF DEFENDANT
PETRO-DIAMOND INCORPORATED'S MOTION FOR ORDER
DETERMINING GOOD FAITH SETTLEMENT**

I, DUANE C. MILLER, an attorney admitted to practice law in the State of California and the State of New York and in this Court, hereby declares the following under penalty of perjury:

1. I am an attorney with the law firm of Miller, Axline & Sawyer, which represents Orange County Water District ("District") in this action.
2. I was actively involved in the negotiation of the settlement between the District and Petro-Diamond Incorporated ("PDI") that is the subject of the present motion. The settlement was achieved only after several years of negotiations between adverse counsel, each advocating their client's position, culminating in a March 30, 2011 mediation before retired Judge Chiantelli. The

settlement is documented and memorialized in the settlement agreement attached to the motion for good faith settlement filed by PDI. The settling parties have at all times negotiated in good faith to arrive at the settlement, balancing the positions of the parties.

3. The settlement is between and among the Orange County Water District and defendant PDI and calls for a cash payment by PDI of \$2,000,000. The settlement has been approved by the District's Board of Directors. The District announced the filing of the lawsuit in the ordinary course of the District's business including but not limited to the published minutes of Board meetings. The District is the sole plaintiff and there is therefore no need to consider allocating among plaintiffs.

4. I have been litigating this action for more than seven years, and have litigated similar toxic tort cases in California for over twenty years. I therefore have a very keen understanding of the type and amount of costs which are likely to be incurred to continue prosecution of this case and defend against potential appeals. As with any litigation, the outcome of the upcoming phases of the litigation is unknown. Given the overall uncertainties of litigation outcomes, but the certainty of litigation costs, it is reasonable to settle with PDI at this juncture under the terms described in the settlement agreement.

5. There is no evidence PDI owned or operated any stations sites in Orange County. PDI, however, distributed gasoline containing MTBE and neat MTBE to customers, and these products may have reached stations in Orange County. The settlement represents a rough approximation of what the District could expect to recover against PDI.

6. Although expert reports on damages for this case have not yet been completed, a rough approximation of the District's total damages in this case is \$500 million dollars.

7. The financial condition of PDI was not considered in reaching this agreement. Insurance coverage was not considered in reaching this agreement.

8. In arriving at the agreement, the settling parties have not engaged in any conduct aimed at making the non-settling parties pay more than their fair share of plaintiff's ultimate recovery, nor have they engaged in any conduct that could be considered fraudulent or tortious.

I declare under penalty of perjury under the law of the State of California that the foregoing is true and correct.

Executed on the 12th day of May, 2011, at Sacramento, California.

A handwritten signature in black ink, appearing to read "Duane C. Miller", is written over a horizontal line.

Duane C. Miller, declarant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served via LexisNexis File and Serve upon all counsel of record on May 16, 2011.

/s/

Brian D. Langa